

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4 - PLR-112016-02

Date:

JUNE 24, 2002

Re:

LEGEND:

Taxpayer	-
Spouse	-
Trust	-
Child	-
Company	-
Date 1	-
Date 2	-
Date 3	-
Year 1	-
Year 2	-
x dollars	-
m shares	-
n shares	-

Dear :

This is in response to your letter dated February 11, 2002, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Generation-Skipping Transfer (GST) Tax exemption. This letter responds to your request.

The facts and representations submitted are summarized as follows:

In Year 1, Taxpayer established Trust, an irrevocable trust, for the benefit of Child and Child's descendants. Child was the trustee and Spouse, Taxpayer's spouse, was the successor trustee. At the time that Trust was established, Taxpayer was the sole shareholder in Company, in which he was the Chairman of the Board and one of two Directors. Child was the President of Company and the other Director. Prior to the creation of Trust, discussions concerning Taxpayer's estate planning needs were held

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with Taxpayer's legal counsel, including Taxpayer's tax attorney. In drafting the Trust, all of the parties discussed and agreed that Taxpayer and Spouse would treat the gifts to the Trust as if made one-half by each spouse and that both would equally allocate their GST tax exemptions to the transfer.

Article 1-3 of the Trust instrument provides that during Child's life, the trustee shall pay all the net income to Child and, upon Child's death, any accrued but undistributed income would be paid to Child's estate. The trustee may distribute to Child such amounts of principal of the Trust as the trustee deems necessary for Child's health, maintenance, support and education. In addition, Child may withdraw annually from the Trust principal the lesser of the amount of additions to the Trust or the amount equal to the gift tax annual exclusion under § 2503(b) of the Internal Revenue Code.

Article 1-4 provides that, upon Child's death, Trust will terminate and the trust estate will be distributed to the spouse or descendants of Child pursuant to Child's exercise of a testamentary limited power of appointment. If Child does not exercise this testamentary power, the trustee will divide the assets of Trust into equal shares the children of Child (grandchild), per stirpes. Each share will be held in a separate trust for the benefit of that grandchild with the income distributed at least annually and the principal distributed when the grandchild attains specified ages. Each separate trust will terminate upon the first to occur of the death of the grandchild or the grandchild attaining age 35, at which time the remaining principal will be distributed to the grandchild or, if the grandchild is not living, to the children of the grandchild. Finally, if there are no such children living at the date of termination, the trustee shall distribute the remaining trust estate to the descendants of Child by right of representation.

On Date 1 (in Year 1), Taxpayer transferred m shares of stock in Company with a stated value of \$x per share to the Trust. Taxpayer and Spouse hired a separate firm to prepare and file their Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, for Year 1. Taxpayer's legal counsel and tax attorney discussed Taxpayer's GST exemption with Taxpayer and intended that Taxpayer and Spouse's GST exemption be allocated to the Trust. However, Taxpayer's legal counsel and tax attorney did not specifically mention the GST exemption issue in the letter to the tax return preparation firm when they forwarded the documentation on the transfers for preparation. The tax preparation firm sent the returns to the Taxpayer for signature and mailing. Legal counsel and the tax attorney did not review the returns prior to filing.

Taxpayer timely reported these gifts on a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, for Year 1. Spouse also timely reported these gifts on a gift tax return for Year 1 and consented to treat the gifts as if made one-half by Taxpayer and one-half by Spouse. On the gift tax returns, which were prepared by an accountant, the transfers to the Trust were listed on Schedule A, Part 1, as gifts that are subject only to the gift tax. In addition, Schedule C, Part 1 and Part 2, referring to the generation-skipping transfer and the allocation, although included with the gift tax

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returns, were left blank. Also, no Notice of Allocation was attached to either return. Thus, no allocation of the available GST exemption was made by either Taxpayer or Spouse to the transfers to Trust.

Child died in Year 2. In reviewing the circumstances surrounding the Trust, Taxpayer's legal counsel discovered that Taxpayer's and Spouse's available GST exemption had not been allocated on the gift tax returns for Year 1. Because of the failure to make an allocation on the gift tax returns filed for Year 1, Taxpayer and Spouse had the stock in Company reappraised and on Date 2 filed amended gift tax returns for Year 1 on which both Taxpayer and Spouse attempted to make a late GST allocation of their available GST exemption to the transfers made in Year 1 based on the value of the stock at the date of the original transfer. The amended gift tax return was filed by Taxpayer and Spouse after the death of Child.

Taxpayer had made an additional transfer of n shares of Company stock to Trust after Year 1 but before Child's death, which were reported on timely filed gift tax returns by both Taxpayer and Spouse, who consented to treat the gifts as if made one-half by each. Because these returns were filed after the discovery that the GST exemption was not properly allocated on the gift tax return for Year 1, Taxpayer and Spouse allocated their GST exemption to this transfer and also attempted to allocate their GST exemption for the Year 1 transfer on these returns. The transfer for Year 1 was listed on Schedule B (Gifts From Prior Periods) of the subsequent returns and a "Notice of Allocation" based on the Date 1 value for the Year 1 transfer was attached to each return.

On Date 3, Trust filed a GST return for terminations, Form 706-GS(T), United States Generation-Skipping Transfer Tax Return For Terminations, and paid the GST tax and statutory interest due.

You have requested the following rulings: (1) an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 to make an allocation of Taxpayer's and Spouse's GST exemption; and (2) that the allocations shall be made based on the value of the property transferred to the Trust as of Date 1, the date of the original transfers.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

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Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Estate Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

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Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. Accordingly, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer's estate and Spouse are granted an extension of time of 60 days from the date of this letter to make an allocation of Taxpayer's and Spouse's available GST exemption, with respect to Taxpayer's and Spouse's transfers to the Trust. The allocation will be effective as of Date 1, the date of the transfers to the Trust, and the gift tax value of the transfers to the Trust will be used in determining the amount of GST exemption to be allocated to the Trust.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. This election should be made on a supplemental Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709s. A copy is enclosed for this purpose.

Sincerely,

William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter